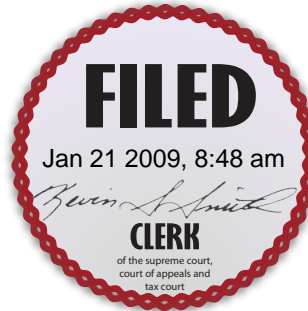


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TERRELL GARTIN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0807-CR-391
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0803-FC-63753

January 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Terrell Gartin pleaded guilty to Criminal Confinement,¹ as a class C felony. The trial court sentenced Gartin to six years in prison, with two of those years suspended to probation. On appeal, Gartin challenges his sentence as inappropriate.

We affirm.

On March 20, 2008, the State charged eighteen-year-old Gartin with seven counts involving an incident that occurred earlier that month with Sade Christie, the mother of one of his children. In an amended information, Gartin was charged with class C felony criminal confinement, class D felony attempted strangulation, two counts of class A misdemeanor domestic battery, class A misdemeanor criminal conversion, and two counts of class A misdemeanor battery. Gartin and the State entered into a guilty plea agreement on May 27, 2008, pursuant to which Gartin pleaded guilty to criminal confinement as charged and the State dismissed the remaining counts. Sentencing was left to the trial court's discretion with the exception of a four-year cap on the executed portion of Gartin's sentence.

Gartin admitted as true the following factual basis at his guilty plea hearing: [O]n or about March 2, 2008, Sade Christie went to the apartment of Terrell Gartin. She spent the night there so Terrell Gartin could spend some time with her three month old son. On March 3, 2008, Sade Christie was getting up to leave with her son when Terrell Gartin told her, "You ain't going nowhere. I told you, you and the baby are moving in with me". When Sade Christie said she was not moving in with Terrell Gartin, Terrell Gartin became angry and started hitting her and kicking her. At some point, Terrell Gartin took Sade Christie's shoes, coats, keys and cell phone, preventing her from leaving. Terrell Gartin also refused to let Sade Christie leave despite her repeated request to do so. During the days of March 3, 2008, to March 5, 2008, Terrell Gartin refused to let Sade Christie leave the apartment. He also hit Sade Christie repeatedly with his fist, feet, shoes, an empty liquor bottle, a belt buckle and/or he hit her with a cooking pot until the handle on the cooking pot

¹ Ind. Code Ann. § 35-42-3-3 (West, PREMISE through 2008 2nd Regular Sess.).

broke causing lacerations, pain and extensive bruising all while the three month old son was in the apartment.

Transcript at 45.

At the conclusion of the sentencing hearing on June 6, 2008, the trial court found several mitigating circumstances, though some were given little weight. Specifically, the court noted in mitigation: 1) Gartin's guilty plea; 2) his young age; 3) hardship to his dependents; 4) his difficult upbringing; and 5) his lack of prior true findings or criminal convictions. On the other hand, the court found the nature and circumstances of the crime to be particularly aggravating, as well as the fact that the crime was committed in the presence of Gartin and the victim's three-month-old child.² Accordingly, the trial court imposed a sentence of six years, with two of those years suspended to probation. Gartin contends that his sentence, which is above the advisory sentence of four years,³ is inappropriate in light of his character and the nature of the offense.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing

² Contrary to Gartin's assertions on appeal, the trial court did not find Gartin's criminal history or record of arrests to be an aggravating factor. Rather, it is clear that the court found Gartin's lack of criminal history to be a mitigating factor.

³ "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Ind. Code Ann. § 35-50-2-6 (West, PREMISE through 2008 2nd Regular Sess.).

decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Gartin bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to his character, Gartin emphasizes his youthful age and his lack of prior convictions or true findings. We observe, however, that Gartin's age and lack of prior convictions/true findings is tempered by the fact that he has had a substantial history of arrests over the last several years (disorderly conduct, criminal recklessness, dangerous possession of a firearm, and prescription offenses). *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) ("a record of arrest...may reveal that a defendant has not been deterred even after having been subject to the police authority of the State" and "may be relevant to the...assessment of the defendant's character in terms of the risk that he will commit another crime").

Further, even if Gartin's character is not considered aggravating, we agree with the trial court that the nature of the instant offense is particularly egregious. The criminal confinement spanned two days, during which Gartin repeatedly brutalized the mother of his infant child. Throughout these two days, he kicked her, threw shoes at her, and beat her with his fists, an empty liquor bottle, a belt buckle, and a cooking pot (until the handle fell off). The record reveals that Gartin caused injury to Christie well beyond that required to constitute criminal confinement as a class C felony. Moreover, Gartin's violent crime occurred in the presence of his child and continued for a number of hours even after the

infant ran out of formula and became hungry. Gartin's sentence of six years with two years suspended to probation is not inappropriate, especially in light of the nature of his offense.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur